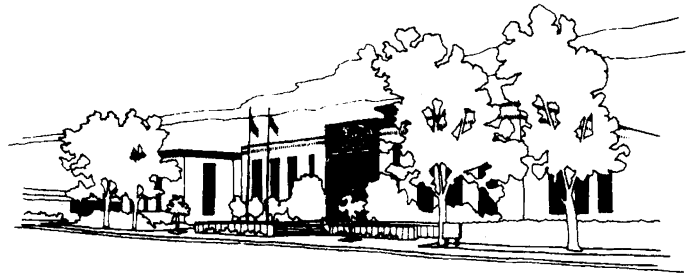
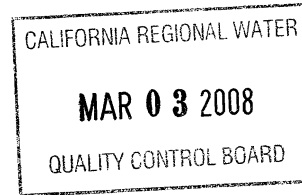


City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577



February 28, 2008



~~MRP~~ Tentative Order Comments

Attn: Dale Bowyer
S.F. Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Comments on Tentative Municipal Regional Storm Water Permit

Dear Mr. Bowyer,

The Water Board issued a draft of the Municipal Regional Permit (MRP) for the San Francisco Bay Region on December 4, 2007 (updated December 14, 2007) for review and comment by interested parties. The City of San Leandro acknowledges the work and effort that has gone into the draft and appreciates the willingness of Water Board staff to work with local agency representatives.

The City of San Leandro supports and concurs with the comments provided by BASMAA and the Alameda Countywide Clean Water Program (ACCWP) and is committed to improving the quality of storm water runoff. We believe that the comments listed below will improve the MRP while providing water quality protection:

Section C.3.b (5)(a): Roadway maintenance projects defined as regulated projects by this section will increase the cost for repair projects, resulting in poor condition roads and greater storm water pollution. Local roadway maintenance programs are uniformly underfunded and no new funding is provided so this action will reduce the amount of roadway that agencies can repair. A reduction in the amount of roadway repaired will result in lower average conditions of roadways. Poor condition roadways contaminate storm water with gravel, sand, and silt and increase wear and tear and maintenance on vehicles. Vehicle maintenance is an activity that has a high likelihood of contaminating storm water. Classifying these roadway projects as regulated projects will cause an increase in storm water contamination by run-off from poorly maintained roads and more intensive vehicle maintenance operations that is unlikely to be offset by the treatment provided for the projects that do get built. We suggest eliminating this section.

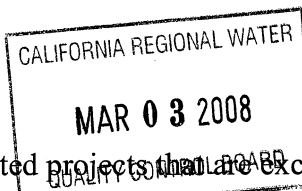
Tony Santos, Mayor

City Council:

Surlene G. Grant;
Diana M. Souza;

Michael J. Gregory;
Joyce R. Starosciak;

Jim Prola;
Bill Stephens



Section C.3.b (5)(c): This section appears to define regulated projects that are exclusively a subset of the regulated projects defined in section c.3.b (5)(a). Duplicate definitions are extraneous, we suggest eliminating this section.

Section C.3.b (5) last paragraph: The paragraph beginning with 'Effective Date' makes a reference to a 5000 sf threshold for inclusion as a regulated project but no such threshold is specified for this section. A future 5000 sf threshold is specified only for section C.3.b (1). We suggest removing this reference.

Section C.3.e (i)(3)(d): TOD projects offer opportunities to decrease dependence upon automobile travel and subsequently reduce the associated pollutants, which is good for storm water quality. The City of San Leandro has recently studied TOD and passed an ordinance encouraging TOD projects but our study indicated that there is very little market for residential units with only one parking space. We request that the exemption for residential units be expanded to include those with up to 1.5 parking spaces per unit. We found that, at this time, 1.5 spaces per unit are required to make developments marketable. Perhaps in another five or ten years habits and attitudes will shift. If so, the exemption limit can be adjusted in future permits.

Section C.4.b (ii)(1): Mandating required inspections based on business type will capture a significant number of facilities that have little or no actual potential. Agencies must have flexibility to allocate resources and prioritize inspection frequencies based on the individual characteristics and operational parameters specific to each commercial or industrial business. Please allow this flexibility by modifying "Types of businesses to be inspected may include the following:"

Section C.4.c: Creating enforcement response plans (this is one of three required in the MRP) is an overly burdensome task that will effectively draw resources away from program implementation and field-based activities to meeting prescriptive demands required by the MRP. This task along with formalization of legal authority reviews is an unnecessary drain on resources. The ACCWP and its member agencies, after over one and a half decades of program implementation, has an established record of utilizing enforcement tools when necessary to manage change and effect results in industrial/commercial facilities and in ceasing illegal discharges. This burdensome blanket requirement should be removed from the MRP entirely from all three sections.

Section C.4.c(i)(1): Prescriptive mandating of categories of violations has no place in the MRP, as it attempts to supplant the law making process. These categories are not codified in state law or found in any case law. Within this prescriptive rhetoric, the MRP is mandating violations for non-discharges and potential, but not actual, acts. This places the agency in an unacceptable situation of liability for its actions with no legal footing when challenged administratively or legally.

Section C.4.c(ii): Maintaining a three year rolling window for repeat offenses is too prescriptive and inappropriate. There is no justifiable need to create this over burdensome and complicated system for tracking and reporting across this multiyear timeframe. For an NOI facility inspected annually it is far too long. Any inspector you speak with about their inspection protocols is going to include review of the last routine inspection report, any follow-up or enforcement subsequent to that inspection report and special note of any deficiencies or previous violations. It does not matter if it was last quarter, last year or multiple years ago.

Section C.4.c(iii): Reporting for the annual report is being greatly expanded to include too much detail on enforcement actions and violation histories. This will divert needed resources from field activities to more documentation and reporting. Attempting to develop and include the annual report form as an appendix to the MRP is ill-timed and ill-advised. Local agency staff do not have adequate time to provide assistance in developing the report due to time constraints created by the MRP, and with the MRP tasks not set, it is impossible to seriously develop the report. The annual report should not be included as an appendix due to the drastic change in format and content from the current reports.

Section C.4.d: Increasing mandated staff training by two also doubles the cost and draws twice the resources away from field-based task implementation. After over 15 years of program implementation to have the MRP prescribe such basics is counterproductive and unnecessary. It also removes flexibility that has been used in the past to provide training or education to targeted audiences, such as the commercial property owners' workshop hosted by the ACCWP a few years ago.

Section C.5.b: Creating enforcement response plans (this is one of three required in the MRP) is an overly burdensome task that will effectively draw resources away from program implementation and field-based activities to meeting prescriptive demands required by the MRP. This task along with formalization of legal authority reviews is an unnecessary drain on resources. The ACCWP and its member agencies, after over one and a half decades of program implementation, has an established record of appropriately utilizing enforcement in ceasing illegal discharges and requiring clean-up and abatement working jointly with OES, Fish & Game, US EPA Spill Response and the Water Board.

Section C.5.b(i)(3): The attempt to classify an illicit discharge into some sort of tiered violation is going to draw a lot of staff time and resources away from field-based oversight and pollutant reduction efforts. An illicit discharge is an illicit discharge and they are all illegal. If it stayed on site or was stopped before it left the site, then on site clean-up and abatement, along with implementing measures to preclude the spill from occurring again are required. If it left the site but was contained in the collection system and did not reach receiving waters then the responsible party (RP) must also clean and abate the collection system. If it did reach any

receiving waters then the local agency is going to defer to county, state and federal agencies regarding corrective actions for mitigation & abatement outside the agency jurisdiction and still take enforcement individually or jointly with responding county, state and federal agencies as circumstances dictate.

Section C.5.c.ii.(3)(c): This reporting requirement is confusing as Water Board staff had dropped reporting of every minor illicit discharge into the curb and gutter years ago. This provision would require an on site illicit discharge (one that did not enter a municipal collection system) to be reported as if it were an actual discharge with eminent threat. This data is currently being reported on the quarterly illicit discharge summary forms contained in the annual reports.

Section C.5.g): Increasing training from biennially to annually is going to double costs and take resources away from current program tasks.

Section C.8: Monitoring requirements are significantly expanded and current estimates are that costs to the ACCWP would increase by \$400,000 to \$600,000 per year and could exceed \$2 million over the five years of the permit. With current budget and financial limitations at both the state and local levels it is unclear how future water quality monitoring will be funded.

Section C.8.e.(iii): Further pilot projects to investigate diversion of discharges from stormwater pump stations to sanitary sewer are premature and inappropriate in the MRP. Most local agencies don't have the authority to divert stormwater to wastewater treatment plants, especially since most don't own or operate treatment plants. Furthermore, the current pilot projects have not generated data yet to determine the environmental suitability, economic viability or practical feasibility to allow the drastic expansion proposed in the MRP. The Ettie Street pilot project has current estimated data, excerpted from the CEP report of:

Construction Costs \$ 13 Million	O& M Costs \$ 1 Million per Year	10 Year Total Cost \$23 Million
Pollutant Removals Per Year In 10 Years	Mercury 70 grams 0.3 pounds	PCBs 200 grams 0.9 pounds
Treatment cost per gram	Mercury \$33,000 per gram per year	PCBs \$11,500 per gram per year

This exorbitant cost is not financially feasible or defensible for most local agencies.

Section C.10.a.i: Requirement to identify and implement trash management controls or catchments on 10% of specified land area does not consider variations of severity of litter

problems in jurisdictions and penalizes cities with large land areas that may not have severe litter problems. Cities may have to waste resources installing trash capture devices or implementing enhanced trash control measures in areas with minimal trash simply to meet the number.

Section C.10.b.i: Local agencies need flexibility in defining areas with full capture devices. For some areas enhanced trash control that prevents trash from entering the storm drain system in the first place may be more productive than capturing trash after it has entered the system.

The proposed prescriptive two-step process of enhanced trash management control followed by installation of full trash capture devices will likely waste limited city resources. Local agencies will have to invest in equipment, staff and other resources to implement enhanced trash measures, which may be unnecessary or duplicative in areas ultimately treated with trash capture devices. Also, why install capture devices if the enhanced trash management is effective at keeping the material out of the storm drains? In addition, neither of these measures addresses the root of the problem nor achieves the ultimate goal of changing the attitudes and cultural mores of the populace to stop littering.

Section C.10.b.i (1): Required trash control measures are overly prescriptive, resource intensive and provide no flexibility for the jurisdiction to cost effectively implement enhanced trash control measures. Jurisdictions have to implement all of these measures regardless of cost, efficiency, effectiveness or long-term benefit. Enforceable parking restrictions, for example, result in significant capital costs for signage placement and enforcement (police) resources. Increased street sweeping, inlet inspection will require additional capital. These measures may be unnecessary or duplicative with the installation of trash capture devices. In addition, increased litter collection and creek cleanups should qualify as trash control measures.

Local agencies received no credit for enhanced trash control measures already in place and could be penalized for existing proactive efforts.

Section C.10.b.ii: Trash assessments are expensive and divert resources from other beneficial activities. This measure is unnecessary and duplicative when quantitative measurement of volumes collected in trash capture devices or enhanced trash capture devices can be obtained.

Section C.11.j: The Tentative Order requires the diversion of stormwater pump station dry weather and first flush flows to the sanitary sewer be implemented in five pilot studies, without first reviewing the results of prior or ongoing pilot tests to evaluate feasibility.

POTW acceptance of stormwater flow must be predicated on a clear understanding of the costs, benefits, risks and consequences. There are significant infrastructure impacts, some not easily coordinated and requiring extensive capital investment. To accept first flush or any wet weather storm runoff will require extensive hydraulic modeling and analysis of the site specific collection

system conditions and treatment facilities to ensure that there are no SSO or permit compliance consequences. How are POTWs protected from SSO penalties caused by these pilot study flows? This portion of the Order also requires actions outside the control or jurisdiction of municipal stormwater agencies. This would require difficult and costly work with the active participation and concurrence of wastewater agencies, most of which are not subject to this order. In addition, wastewater agencies cannot provide free services per bond covenants, federal grants and loan agreements.

The City believes that the actions required are prescriptive in nature without first considering information from completed and in progress pump station diversion projects. An assessment of the results must be provided so that informed approaches to this issue can be a part of this permit provision. We are most interested in accomplishing work dedicated to protecting our environment and the bay and believe that a more flexible, measured approach including focused studies with modeling, is the best way to provide for interagency buy-in and ensure that our collective resources are focused on where we can expect a return, while overcoming the issues raised above.

Section C.14: Duplicate and/or inconsistent requirements regarding PCBs are within sections C.8.f. and C12. This is one of the fundamental issues with the MRP, the lack of cohesion and consistency within the document. Requirements dealing with monitoring or studies of PCBs should all be in one place so that it is easy to understand and reference them. Where needed, another section should simply reference the section with the actual requirements.

Section C.14.a: The San Francisco Estuary Institute has only initial data via their study efforts and no state funding to complete the work. The Water Board anticipating that control measures that may work for one pollutant will also work for the other pollutants is not justification that any local agency can use to divert already short resources into completing characterization of legacy pollutant distribution research for the Water Board.

Section C.15.b.i: Foundation drains, water from crawl space pumps and footing drains are a structural safety requirement relating to the integrity of a building. They are used to remove collected rain water, rising ground water and infiltration. These sources are contained in C.15.a, under exempted discharges, and should be removed from this section.

Section C.15.b.ii.(c): Many local agencies lack the authority to dictate discharge to sanitary sewers. It is therefore inappropriate for the MRP to contain such a mandate. Additionally, sanitary disposal is not the only environmentally acceptable and viable alternative for disposal of air conditioning condensate. It could be used for irrigation, especially on a green roof structure or recycled into a building system such as boiler water makeup. We can and have been very successful with educating and informing those who can drive change in this arena if given a less restrictive and prescriptive MRP.

Appendix A: The flowchart for provision C.3.e has two paths leaving the box marked 'Regulated Project', but neither path is labeled so there is no way to determine (on the flowchart) which path to take. We suggest adding labels to each path indicating which conditions would result in choosing that path.

The City of San Leandro appreciates the opportunity to provide input on this version of the MRP. If any of the above comments require clarification please contact John Camp, Environmental Services Supervisor, at 510-577-6029.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Bakaldin", with a stylized flourish at the end.

Michael Bakaldin
Public Works Director